

ESTATE OF ROLAND LOYD (MOBEADLEMAH) BOTONE

IBIA 79-17

Decided August 16, 1979

Appeal from the order of an Administrative Law Judge affirming an order determining heirs after rehearing.

Affirmed.

1. Evidence: Prima Facie Case

Pursuant to the provision of 63 Oklahoma Statute 1-324, a birth certificate is prima facie evidence of the facts therein stated and unless rebutted is sufficient in and of itself.

2. Indian Probate: Appeal: Administrative Law Judge as Trier of Facts

The weight and credibility of evidence are matters properly considered by an Administrative Law Judge in the first instance. His findings, when in accord with the preponderance of the substantial and probative evidence adduced, will not be disturbed.

3. Indian Probate: Appeal: Administrative Law Judge as Trier of Facts

Where there is sufficient evidence to support the finding and testimony is conflicting the determination of witness credibility and the findings of the fact by the Examiner (now Administrative Law Judge) will not be disturbed because only he had the opportunity to hear and observe the witnesses.

APPEARANCES: Joyce La Verne Anderson Botone, appellant, pro se.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from the Order of Administrative Law Judge Sam E. Taylor, affirming Order Determining Heirs issued by Administrative Law Judge Jack M. Short on July 29, 1977. 1/

Roland Loyd Mobeadlemah Botone, hereinafter referred to as decedent, died intestate on November 5, 1975. After hearing held in Tulsa, Oklahoma, on March 23, 1977, Judge Short determined decedent's heirs at law to be:

Joyce La Verne Anderson Botone--wife	1/9
Montia Wayne Botone-son	1/9
Rose Carmen Botone--daughter	1/9
Phillip Loyd Botone--son	1/9
Indis Joy Botone--daughter	1/9
Roland Lloyd Botone, II--son	1/9
Carolyn Luella Botone--daughter	1/9
Harold Dean Botone--son	1/9
Anthony Dale Botone--son	1/9

Evidence elicited at the March 23, 1977, hearing established that decedent lived with many women in Kansas, Oklahoma, and Japan, one of whom was Marjorie Louise Brown Botone, prior to his marriage by civil ceremony to Joyce La Verne Anderson Botone, on September 22, 1967.

A timely petition for rehearing was filed by decedent's widow, Joyce Botone, wherein she alleged that she was aggrieved by Judge Short's determination that Carolyn Luella Botone and Phillip Loyd Botone were children of the decedent and Marjorie Botone.

The petitioner alleged that Judge Short committed the following errors in arriving at the above determination:

1. He based his determination on insufficient evidence.
2. He admitted incompetent evidence into the record, to wit: A letter signed by Marjorie Louise Brown, mother of said minor children.
3. Petitioner was not represented adequately by counsel and had no witnesses present to testify that children were not fathered by decedent because counsel failed to notify them.

1/ Sometime subsequent to his July 29, 1977, Order Determining Heirs, Judge Short resigned his position to accept a position elsewhere. Judge Taylor succeeded Judge Short.

4. Petitioner submitted sufficient evidence to refute the prima facie evidence of the birth certificates of Carolyn and Phillip Botone.

5. Judge Short abused his discretion in that evidence introduced was not sufficient to justify his ruling; and that the evidence is in conflict with and in disregard of the evidence introduced by petitioner.

Judge Taylor granted the petition for rehearing because certain evidence was improperly considered and received subsequent to the March 23, 1977, hearing. Judge Taylor denied appellant's motion to rehear the paternity of Phillip Loyd Botone.

A hearing was held at Anadarko, Oklahoma, on June 21, 1978, only insofar as the paternity of Carolyn Luella Botone was concerned, at which time Jack E. Naifeh, Esq., appeared on behalf of and ably represented decedent's widow, Joyce Botone.

Judge Taylor on January 9, 1979, found that the birth certificate showing Carolyn Luella Botone to be the daughter of Marjorie Louise Brown Botone and decedent, Roland Loyd Botone, was now a proper part of the record. He further found in accordance with the provision of 63 Oklahoma Statute 1-324 that said birth certificate is prima facie evidence of the facts therein stated and unless rebutted is sufficient in and of itself.

After weighing all of the evidence submitted by the appellant, Judge Taylor found that the evidence presented was not sufficient to rebut the prima facie evidence of the birth certificate of Carolyn Luella Botone.

Judge Taylor further found that decedent was the father of Carolyn Luella Botone and that the Order Determining Heirs dated July 29, 1977, should be and the same was affirmed.

A timely appeal was received from Joyce La Verne Botone, the grounds being identical to those set forth in the petition for rehearing, referred to, supra.

The Board has carefully reviewed the record in the case at bar, including testimony elicited at the hearings held on March 23, 1977, and June 21, 1978, and concludes that the findings of Judges Short and Taylor are supported by a preponderance of the substantial and probative evidence adduced therefrom.

We find that Phillip Loyd Botone and Carolyn Luella Botone are the children of the decedent and Marjorie Botone.

[1] Pursuant to the provision of 63 Oklahoma Statute 1-324, a birth certificate is prima facie evidence of the facts therein stated and unless rebutted is sufficient in and of itself.

[2] The weight and credibility of evidence are matters properly considered by an Administrative Law Judge in the first instance. His findings, when in accord with the preponderance of the substantial and probative evidence adduced, will not be disturbed. United States v. Humboldt Placer Mining Co. and Del De Rosier, 81 IBLA 407 (1972).

[3] Where there is sufficient evidence to support the findings and the testimony is conflicting, the determination of witness credibility and the findings of fact of the Examiner (now Administrative Law Judge) will not be disturbed because only he had the opportunity to hear and observe witnesses. Estate of Crawford J. Reed, 1 IBIA 326, 79 I.D. 621 (1972).

We find no merit to the contentions raised by the appellant.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Board AFFIRMS the Order Determining Heirs issued by Judge Short on July 29, 1977, and this appeal is DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

Mitchell J. Sabagh
Administrative Judge

We concur:

Frank Arness
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge